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REVIEWS.

TAGORE LAW LECTURES, 1894. THE LAW OF FRAUD, MISREPRESENTATION, AND MISTAKE IN BRITISH INDIA. By Sir Frederick Pollock, Bart. Calcutta: Thacker, Spink, & Co., Publishers to the University of Calcutta. London: W. Thacker & Co., 87 Newgate Street. 1894. pp. xii, 160.

How can a man do better than his best? What can the distinguished author have to say on the law of fraud that has not already been said compendiously and exactly in his admirable works on Torts and Contracts? How can lectures at Calcutta differ from lectures at Oxford?

One who, in this sceptical spirit, takes up the Tagore Lectures will meet with an agreeable surprise. Much, very much, in the shape of valuable suggestion and criticism will be found here that is not stated with equal fulness and distinctness in the writer's earlier books. The explanation is not that the law has grown during the last year or two. It is rather that, in preparing these lectures, Sir Frederick Pollock has had the great advantage of contemplating the law from a comparatively new point of view. The principal task of one who prepares a text-book for home practitioners is to state in neat and concise form the resultant force of the home decisions; and any criticisms ventured upon are only incidental. But he who undertakes to state the home law to what may fairly be called a foreign audience, in a foreign country, has another task before him. It is not enough to say, This is the result reached by the English courts. His hearers will demand to know what are the fundamental reasons, if any, upon which those results have been reached. No one can carry out the theory that judicial authority is the unerring guide to truth when he goes beyond the limits of his own country, even if the country to which he speaks is under the same general dominion.

Although Sir Frederick Pollock has always paid great regard to principle, and has in no sense been the slave of authority, yet in none of his text-books has he ever written with so free a hand as in these lectures delivered at the University of Calcutta. The best test of a so-called legal principle is to attempt to explain it to an intelligent foreign community; and it will be found in relation to some doctrines that "the very act of expounding" them to a stranger will sufficiently condemn them.

Undoubtedly, in some respects, India does not stand to England in the relation of a foreign country. Indeed, the author says (p. 12) that the law to be dealt with in this course "will in the main be English law;" but he adds, "it is not English law pure and simple. It is Anglo-Indian law. . . ." On many subjects the rules of English law prevail, "if found applicable to Indian society and circumstances" (p. 10). But (p. 54) "considerations of local fitness must always have weight when precedents are cited from a country remote both in place and manners." It is admitted (p. 52-54) that such a leading English case as *Rylands v. Fletcher* has been "materially qualified in its application to British India." And it is rightly said (p. 54) that to follow *Filburn v. Aquarium Co.* in India "would be both absurd and disastrous." So the rule of evidence admitting dying declarations has been found in India to work badly. "A remark made on the policy of the rule by a native of Madras shows how differently such matters are viewed in different parts of the world. 'Such evidence,' he said, 'ought never to be admitted in any case. What motive for telling the truth can any man possibly have when he is at the

point of death?" It is even reported that, in the Punjab, "a person mortally wounded frequently makes a statement bringing all his hereditary enemies on to the scene at the time of receiving his wound, thus using his last opportunity to do them an injury" (1 Stephen's History of the Criminal Law of England, pp. 448-449).

Even if these lectures are to be regarded simply as English law carried to India and brought back again, it is plain that English law has been a gainer by its travels; it comes to us now with an improved flavor, such as a pipe of wine was formerly supposed to acquire by a voyage to Bengal and back.

Macaulay, in a familiar passage, has asserted that British lawyers, if called upon to answer a question as to the postulates on which their system rests, or to vindicate the fundamental maxims of that system, often talk the language of savages or of children. No such reproach can be made against the author of the Tagore Lectures. While he has never criticised for the mere sake of fault-finding, yet he has not attempted to evade a single difficulty, and has not hesitated to question, in a manner at once temperate and forcible, some existing English doctrines.

It is, perhaps, fortunate that this book did not appear earlier, for it would very likely have embittered the last days of Mr. David Dudley Field. The Draft Civil Code of New York comes in for pointed condemnation. It is spoken of as a "much and justly criticised performance;" "an ambitious and unsatisfactory composition, which has had an evil influence on the Indian Codes in more than one place." It is even said of certain clauses: "In fact, the only definite notion they convey to the mind of an English lawyer is, that the men who set their hand, in the New York draft of a Civil Code, to the work of codifying the Common Law, were not lawyers enough to understand the nature of the difficulties, nor sufficiently skilled in drafting (not to say the correct use of the English language in general) to clothe their meaning, when they had one, in apt words." (See pp. 20, 95, 99, 122.) J. S.

THE FEDERAL INCOME TAX EXPLAINED. By John M. Gould and George F. Tucker. Boston: Little, Brown & Co. 1894. pp. xiv, 108.

This little book makes no pretensions to being a complete treatise on the income tax. Its avowed object is simply to elucidate those parts of the new statute which have occurred in former acts and been construed in that connection; and, under the belief that a similar interpretation will be given in the present case, the authors have ransacked the books to good purpose. Recourse has been had not only to American reports, but also to English and Canadian decisions, though to a far less extent as less applicable to our recent act, and the work as a whole, though necessarily of somewhat hypothetical value, has been put into a serviceable shape for the profession at large. D. A. E.

GENERAL DIGEST, AMERICAN AND ENGLISH, ANNUAL, 1894. Prepared and published by the Lawyers' Co-operative Publishing Co., Rochester, N. Y., 1894. pp. lxxxiv, 3070.

This is the ninth volume of the "General Digest of the United States." The new title is in recognition of the presence of the English and Canadian decisions. The size pp. 3162 is to be compared with pp. 2722 of the rival publication which has a somewhat larger page and certainly no larger type. R. W. H.